

**\*E-FILED: 7/5/2007\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT CARMELO TORRE,

No. C 07-02682 HRL

Plaintiff,

**ORDER (1) DENYING WITHOUT  
PREJUDICE APPLICATION TO  
PROCEED *IN FORMA PAUPERIS*; AND  
(2) DISMISSING COMPLAINT WITH  
LEAVE TO AMEND**

v.

THE CITY OF SANTA CRUZ, CALIFORNIA,

Defendant.

**[Re: Docket No. 2]**

On May 21, 2007, plaintiff filed a complaint along with an application to proceed *in forma pauperis*.<sup>1</sup> He contests a \$25 parking ticket issued by defendant City of Santa Cruz (“City”). In essence, he appears to allege that the ticket was issued in violation of his civil rights under 42 U.S.C. § 1983 because (a) he was parked in a privately owned lot and (b) the City fined him without first holding a jury trial.

Pursuant to 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action *in forma pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). However, a court may deny *in forma pauperis* status under certain circumstances, including when the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir 1990).

<sup>1</sup> Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, plaintiff has expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned.

1 Local governments are "persons" subject to liability under 42 U.S.C. § 1983 where an  
2 official policy or custom causes a constitutional tort. *See Monell v. Dep't of Social Servs.*, 436  
3 U.S. 658, 690 (1978). Here, the complaint does not plead facts as to the existence of an  
4 unconstitutional policy or custom which would give rise to municipal liability. Accordingly, IT  
5 IS ORDERED THAT:

6 Plaintiff's application to proceed *in forma pauperis* is DENIED WITHOUT  
7 PREJUDICE and the complaint is DISMISSED WITH LEAVE TO AMEND. Any amended  
8 complaint shall be filed **no later than August 6, 2007**. The court will dismiss this case without  
9 prejudice if a timely amended complaint is not filed.

10 IT IS SO ORDERED.

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12 Dated: July 5, 2007

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16 HOWARD R. LOYD  
17 UNITED STATES MAGISTRATE JUDGE  
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1 A copy of this document will be mailed to:

2 Robert Carmelo Torre  
3 P.O. Box 307  
4 Santa Cruz, CA 95061

5 Dated: 7/5/07 /s/  
6 Chambers of Magistrate Judge Lloyd